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Re: In the Matter of the NorthMet Project Permit to Mine Application,
OAH 60-2004-37824

Director Wilson:

On March 11, the Fond du Lac Band of Lake Superior Chippewa ("Band") provided to you information regarding PolyMet's apparent change in plans for elements of the NorthMet Project and requested that you either "vacate the schedule for submitting objections and arguments . . . require PolyMet to confirm whether it will construct the proposed bentonite amendment and whether it will construct any such amendment to meet the specifications described in the permit to mine application, and give the other parties the opportunity to respond" or "stay the briefing schedule and order a supplemental briefing schedule, in which PolyMet must explain whether it will construct a bentonite amendment to meet those specifications and the other parties may

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April 3, 2024
By Email

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respond.” On March 13, you temporarily stayed the deadlines to submit written exceptions and arguments and ordered that “[a]ll other parties” should “submit written responses to the Band’s letter and the requests described therein.” Under the modified schedule you issued on March 19, PolyMet filed a response on March 26, DNR’s litigation team filed one on April 2, and the other petitioners in this case—but not the Band—have until April 9 to file responses.

In their responses, PolyMet and DNR’s litigation team have submitted substantial new arguments on whether the Band’s request should be granted and whether the ALJ’s recommendation should be accepted that the Band does not currently have an opportunity to address. For example: PolyMet filed a letter confirming the accuracy of the email which the Band submitted with its March 11 letter brief, stating that it is engaged in a “thorough technical review,” but also arguing that DNR cannot deny the permit to mine application based on that information; DNR’s litigation team’s letter proposes a stay of up to nine months but also suggests that the proceeding would be “moot” if PolyMet changes its plans for the use of bentonite.

Under principles of fairness and due process, the Band should be able to respond to PolyMet’s and DNR’s new arguments opposing its request for relief. The current schedule does not give the Band an opportunity to respond. The Band therefore respectfully requests that you allow the Band to file a response to PolyMet’s and DNR’s new arguments by April 9 when the other petitioners’ responses are due.

Respectfully submitted,

/s/ Frank S. Holleman

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